IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1747 of 2006
To
FIRST APPEAL No. 1762 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant
Versus
DALPATSANG BHUPATSANG ZHALA & 1 -Respondents

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Appearance :
MR SUDHANSHU S PATEL, A.G.P. for Appellant
MR KM SHETH for Respondent-claimant/s
MR AD OZA for the Executive Engineer, Narmada Yojna, Division No.4/3, Kadi.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 21/06/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted.

Mr.K.M.Sheth, learned counsel, waives service of notice on behalf of the claimant/s in each appeal. Mr.A.D.Oza, learned counsel, waives service of notice on behalf of the Executive Engineer, Narmada Yojna, Division No.4/3, Kadi, in each appeal. At the the joint request of the learned advocates for the parties, the appeals are taken up for final disposal today.

2. By means of filing abovenumbered appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellant has challenged legality of common judgment and award dated October 20, 2003 rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.1444 of 1996 to 1459 of 1996 by which the claimants are awarded additional amount of compensation at the rate of Rs.13/- per square metre over and above the compensation already awarded to them by the Land Acquisition Officer.

3. The Executive Engineer, Narmada Canal, Division

No.4/3, Kadi, proposed to the State Government to acquire lands of Village Panar, Taluka: Viramgam, District : Ahmedabad, for the public purpose of construction of Viramgam Branch Canal of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that the lands of Village: Panar were likely to be needed for the said public purpose. Therefore, notification under Section 4 of the Act was issued, which was published in the official gazette on August 30, 1992. The landowners whose lands were sought to be acquired were served with the notices. They filed their objections against the proposed acquisition. After considering their objections, a report was submitted by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of Village: Panar, which were mentioned in the notification published under Section 4 of the Act, were needed for the public purpose of construction of Viramgam Branch Canal No.2 of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on September 22, 1993. The interested persons were thereafter served with the notices under Section 9 of the Act for determination of compensation payable to them.

The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.25/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.1.27ps. per square metre. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted written applications requiring the Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation payable to them. Accordingly, the references were made to the District Court, Ahmedabad (Rural), which were registered as Land Acquisition Case Nos.1444 of 1996 to 1459 of 1996.

4. On behalf of the claimants, Dalpatsng Bhupatsang Zala was examined at Exhibit 42. Over and above stating that the acquired lands were highly fertile and that each claimant was able to earn Rs.30,000=00 per annum from sale of agricultural produces, the witness produced two previous awards of the Reference Court for consideration of the Court. The first award was in respect of the lands of Village: Chanothiya, which were acquired pursuant to publication of notification under

Section 4(1) of the Act in the official gazette on April 26, 1993 for the purpose of construction of Narmada Canal. The second award was in respect of lands of Village: Khudad, which were acquired pursuant to publication of notification under Section 4(1) of the Act in the official gazette on June 11, 1992 for the purpose of construction of Narmada Canal. The witness examined by the claimants was cross-examined by the learned Government Pleader. During the course of cross-examination, the witness stated that Village: Panar was situated at a distance of 5 Kilometres away from Village Detroj and 10 Kilometres away from Village: Viramgam. The suggestion made to the witness that the lands of Village: Panar were infertile was emphatically denied by him. On appreciation of evidence adduced by the parties, the Reference Court noticed that in the case of lands of Village: Khudad, notification under Section 4(1) of the Act was published on June 11, 1992 whereas in the instant case notification under Section 4(1) of the Act was published on August 30, 1992 and, therefore, the learned Judge was of the opinion that the two notifications being proximate to each other in point of time, the previous award produced by the claimant at Exh.41 furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case from Village:

Panar. After placing reliance on the said previous award, the learned Judge by common judgment and award dated October 20, 2003, has held that the claimants are entitled to additional compensation at the rate of Rs.13/- per square metre over and above the compensation awarded to them by the Special Land Acquisition Officer, giving rise to abovenumbered appeals.

5. This Court has heard Mr.Sudhanshu S. Patel, learned Assistant Government Pleader appearing for the appellant, as well as Mr.K.M.Sheth, learned counsel appearing for the claimant/s, and Mr.A.D.Oza, learned counsel appearing for the acquiring body. This Court has also taken into consideration the evidence produced by the learned advocates for the parties for consideration of the Court.

6. The function of the Court in awarding the compensation under the Act is to ascertain the market value of the land at the time of notification under Section 4(1) of the Act and the methods of valuation may be: (1) opinion of experts; (2) the price paid within a reasonable time in *bona fide* transactions of purchase or sale of the lands acquired from the same village/town or of the lands adjacent to those acquired and possessing similar advantages; and, (3) a number of years' of

purchase of the actual or immediately prospective profits of the lands acquired. In the instant case, the claimants have neither furnished evidence relating to sale transactions nor claimed compensation on yield basis and have relied upon the previous award for the purpose of claiming higher rate of compensation. Exh.41 is the award of the Reference Court rendered in Land Acquisition Case Nos.2047 of 1996 to 2058 of 1996. It indicates that pursuant to publication of notification under Section 4(1) of the Act in the official gazette on June 11, 1992, the lands of Village: Khudad, Taluka: Viramgam, District: Ahmedabad, were acquired for the public purpose of construction of Narmada Canal. Therein the Land Acquisition Officer had offered compensation at the rate of Rs.0.60 ps. per square metre. Feeling aggrieved, the references were sought and the Reference Court, on appreciation of the evidence adduced before it, awarded additional compensation of Rs.13/- per square metre over and above the compensation already awarded to the claimants by the Land Acquisition Officer. During the course of hearing of the appeals, the learned counsel for the claimants has produced xerox copy of judgment dated May 10, 2005 delivered in First Appeal Nos.1263 of 2005 to 1277 of 2005 with First Appeal Nos.1278 of 2005 to 1289 of 2005 by the Division Bench comprising B.J.Shethna

& M.C.Patel, JJ. for perusal of the Court. It indicates that common judgment and award rendered on April 29, 2003 by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.2047 of 1996 to 2058 of 1996 has been confirmed. The evidence adduced by the witness of the claimants indicates that the lands, which were acquired from Village: Khudad, are just adjoining to the lands acquired in the instant case and possessing similar advantages. In fact, the evidence would indicate that half portion of the border of Village: Khudad is touching the border of Village: Panar. The witness examined on behalf of the acquiring body has supported the claim advanced by the witness examined by the claimants that the lands which were acquired earlier from Village: Khudad were adjacent to the lands acquired in the instant case. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award relating to the lands of Village: Khudad for the purpose of determining the market value of the lands, which were acquired from Village: Panar in the instant case. It is well settled that the award rendered by the Reference Court relating to similar lands and which has become final can be taken into consideration for the purpose of

determining the market value of the lands acquired from another adjoining village. This Court has gone through the impugned judgment carefully in the light of the evidence produced by the learned counsels for the parties before this Court. The learned Assistant Government Pleader could not satisfy this Court that the impugned judgment and award suffers from any error warranting interference of this Court in the present appeals. Under the circumstances, the appeals, which have no merits, deserve to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

(patel)